

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATIONS NOS 1462,
1873 & 2117 OF 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements? YES
2. To be referred to the Reporter or not? NO :
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? NO
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? NO
5. Whether it is to be circulated to the Civil Judge? -NO

PRAKESH BACHUBHAI MAKWANA

Versus

COMMISSIONER OF POLICE

Appearance: IN ALL THE THREE MATTERS.

MS BANNA S DUTTA for Petitioners.

MS PUNANI APP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 15/06/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective
parties.

All these three petitions are directed against

the orders of detention dated 10th August, 1998, made against the concerned petitioner, by the Commissioner of Police, Ahmedabad City, under the powers conferred upon him under sub-section (2) of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act'). Along with the orders of detention, the writ petitioners are also served with the grounds of detention.

The orders of detention against all the three petitioners are made in view of the criminal complaint being CR No. 69/98, lodged against them on 6th July, 1998, at GIDC Vatva Police Station, for commission of offences punishable under sections 376, 348, 506 (2) and 114 IPC. The allegation against the three writ petitioners is that on 6th July, 1998, after mid-night, the said three writ petitioners gang-raped one minor girl named Gita. It is further recorded that on 25th June, 1998 and 1st July, 1998 also, the three writ petitioners attempted to molest the lonely women passing by the road. When prevented by a member of the public, he was beaten and threatened with the knife. Even the crowd gathered there had no courage to rescue the witness and the crowd was threatened by brandishing the knives.

The only challenge to the impugned orders of detention raised before me is that a solitary complaint has been lodged against the writ petitioners, and in account of the solitary offence alleged to have been committed by the petitioners, they can not be branded as 'dangerous person' as defined under section 2 (c) of the Act. In support of her contention, Ms. Dutta has relied upon the judgment of the Hon'ble Supreme Court in the matter of RASHIDMIYA @ CHHAVA AHMEDMIYA SHAIK VS POLICE COMMISSIONER AHMEDABAD & ANR. (AIR 1989, SC, 1703); and of this court in the matter of HAFIJUDDIN FAZLUDDIN KAZI VS COMMISSIONER OF POLICE AHMEDABAD CITY & ANR (1992 (2) GLR, 1332).

Section 2 (c) of the Act defines 'dangerous person' to mean a person who either by himself or as a member or a leader of a gang habitually commits, or attempts to commit or abates commission of any of the offences punishable under Chapter-XVI, or Chapter-XVII of the IPC, or any of the offences punishable under Chapter-V of the Arms Act, 1959. In the matter of Rashidmiya (supra), the Hon'ble Supreme Court has held that, "to bring a person within that definition, it must be shown that he is habitually committing or attempting to commit or abetting the commission of offences enumerated therein.....Therefore, this solitary

incident would hardly be sufficient to conclude that the detenu was habitually committing or attempting to commit or abetting the commission of offences." In the matter of Hafizuddin Fazluddin (supra) also, this court held that " In view of a solitary offence registered against the petitioner-detenu, he can not be termed as or branded as a 'dangerous person' within the meaning of section 2 (c) of the Act ".

I have perused the grounds of detention as well as the supporting material. Upon perusal of the statements of the witnesses, it does appear that before the date of offence registered against the petitioners, the very petitioners had, on 25th June, 1998 and 1st July, 1998, made an attempt to outrage the modesty of lonely women passing by the road. The witnesses have also stated that on account of the alarm raised, the crowd had gathered and the petitioners left the place of incident brandishing knives at the crowd. It, therefore, appears that the petitioners, who are residents of the same area, are used to harass the lonely women passing by the road. At this stage a reference can be had to the observations made by the Hon'ble Chief Justice Mr.Hidaytullah in the matter of ARUN GHOSH VS STATE OF WEST BENGAL (AIR 1970, SC, 1228). The Court has observed that, " Take another case of a man who molests women in lonely places. As a result of his activities girls going to colleges and schools are in constant danger and fear. Women going for their ordinary business are afraid of being way-laid and assaulted. The activity of this man in its essential quality is not different from the act of the other man but in its potentiality and in its effect upon the public tranquility there is a vast difference. The act of the man who molests the girls in lonely places causes a disturbance in the even tempo of living which is the first requirement of public order. He disturbs the society and the community. His act makes all the women apprehensive of their honour and he can be said to be causing disturbance of public order and not merely committing individual actions which may be taken note of by the criminal prosecution agencies." Thus, to me, it does appear that the present writ petitioners are habituated to harass and outrage the modesty of the lonely women passing by the road which would necessarily cause public disturbance. The evidence on record, leaves no doubt that the present writ petitioners are habituated to commit offences against the persons of the locality, they are necessarily 'dangerous person' as defined in section 2 (c) of the Act, and their activities, as observed by the Hon'ble Supreme Court in the above referred case of Arun Ghosh, necessarily disturb the

public tranquility, and even tempo of living. In above view of the matter, the judgments relied upon by Ms. Dutta shall have no applicability.

In view of the above discussion, there being no other challenge to the orders of detention, the impugned orders of detention made against the concerned writ petitioner are upheld.

All the three writ petitions are dismissed. Rule Nisi issued in each of the petitions is discharged. Registry is directed to place a copy of this judgment in other two petitions.

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JOSHI